THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22782 of 2005

Dated 29th November 2005

-

Between:

Dr.Ch.Muralikrishna, M.D.S. S/o.Venkata Narayana.

…Petitioner

and

The A.P. State Dental Council,

Rep. by its Registrar, Hyderabad & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22782 OF 2005

O R D E R:

The petitioner is a Post Graduate Dental Surgeon. He is registered with the A.P. State Dental Council, the first respondent herein. Proceedings were initiated, against the petitioner, under the Dentists Act, 1948, for short "the Act", read with the A.P. Dental Council Rules, for short "the Rules". At its meeting held on 24.3.2005, the first respondent resolved to remove the name of the petitioner from the Register of Dentists, hereinafter referred to as "the Register". The gist of the resolution is said to have been communicated to the petitioner on 5.10.2005. The petitioner challenges the same. He contends that the first respondent did not follow the procedure prescribed under the Act and the Rules, before such drastic action was taken against him. He further contends that he became the victim, on account of the unhealthy competition in the profession, in Vijayawada.

Sri C.S.K.V.Ramana Murthy, learned counsel for the petitioner, submits that Chapter VIII of the Rules prescribes a detailed procedure, in the matter of passing orders, removing a Dentist from the Register, and that the first respondent did not follow it. He submits that an opportunity of being heard, ought to have been provided to the petitioner, at the General Body of the Council, and that such a step was not taken. He has also made submissions, touching on the merits of the matter.

Learned Government Pleader for Medical & Health, on the other hand, submits that the first respondent followed the procedure prescribed under the Rules, and if the petitioner is aggrieved by it, he can avail the remedy of appeal provided for, under the Act.

On receiving a complaint against the petitioner, alleging that he is resorting to unethical practices, proceedings were initiated against him, earlier, in the year 2004. The proceedings were concluded, with the imposition of fine of Rs.1,000/- and administration of a warning. Thereafter, the petitioner was issued a show-cause notice, dated 20.11.2004, on the basis of complaints received from about 16 Dentists, in and around Vijayawada. The General Body meeting of the Council was held on 24.3.2005, and it was resolved that the name of the petitioner be removed from the Register. Petitioner states that the decision of the General Body of the Council, contained in proceedings dated 27.5.2005, was served upon him on 5.10.2005. According to sub-section (3) of
Section 41 of the Act, the order would come into force, on expiry of three months, obviously from the date of service. Sub-section (2) of Section 41 mandates that an order passed under sub-section (1) shall render such Dentists ineligible for registration, either permanently, or for such period, as may be specified. Through the impugned order, the first respondent has extended an opportunity to the petitioner, to apply for restoration of his name in the Register, 30 days after surrendering the registration certificate.

It is not in dispute that the order passed under
sub-section (1) of Section 41 of the Act is appealable to the State Government under sub-section (4) thereof. The petitioner tries to justify his action of directly approaching this Court, without exhausting the alternative remedy, by alleging that the principles of natural justice were violated in his case. It is true that violation of principles of natural justice would enable an aggrieved party to file a writ petition,

straight away, without exhausting the alternative remedy. In the instant case, the petitioner does not complain that he was not issued notice at all. His grievance is that he was not provided with an opportunity to put forward his case before the Council, and that he was heard only by a Committee, thereof. To appreciate this contention, verification of record becomes necessary. The appellate authority would in a better position to examine the record and to grant appropriate relief. Even where this Court can interfere and notices any technical defect, or procedural irregularity, it cannot reappreciate the matter on merits. The appellate authority, on the other hand can, not only examine the matter from the points of view of the procedure, but can also substitute its own opinion for that of the original authority, i.e. the Council. Therefore, this Court is not inclined to entertain the writ petition, at this stage.

Hence, the writ petition is disposed of, leaving it open to the petitioner to avail the remedy of appeal, before the third respondent. It shall also be open to him, to seek interim orders before the appellate authority. In case, the petitioner prefers an appeal and an application for interim orders is made, the appellate authority shall pass appropriate orders, in the application for interim orders, within one week from the date of presentation, or before the order passed against the petitioner becomes operative, whichever is earlier. There shall be no order as to costs.

_____

(**L.NARASIMHA REDDY, J)**

Dt.29th November 2005

PAN